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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/720,070	09/27/1996	RICHARD G HYATT JR.	P53821C	1185
7590	02/28/2008		EXAMINER	
ROBERT E BUSHNELL, ATTORNEY-AT-LAW 1522 K STREET, N.W. SUITE 300 WASHINGTON, DC 200051202			BARRETT, SUZANNE LALE DINO	
			ART UNIT	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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FEB 27 2008

TECHNOLOGY CENTER 3600

In re Application of:

Richard G. Hyatt, Jr.
Appl. No.: 08/720,070
Filed: September 27, 1996
For: Electromechanical Cylinder Plug

:PETITION TO INVOKE
:SUPERVISORY AUTHORITY
:UNDER 37 CFR 1.181

This is a decision on the renewed petition under 37 CFR 1.181 filed on October 16, 2007 requesting entry of the amendment filed November 30, 2006 and for the examiner to reopen prosecution according to 37 CFR 41.39(b)(1). There is no fee required for this petition.

The Petition is **DISMISSED**.

After review of the above file, the file history shows that a final Appeal Brief was filed on March 8, 2006 under the old Appeal Brief rules of practice 37 CFR 1.192. In response to this Appeal Brief, the examiner sent out an Examiner's Answer on September 27, 2006. Upon receipt of the Examiner's Answer, the applicant then filed the above mentioned amendment on November 30, 2006 because it is alleged by applicant that the Examiner's Answer contains a new grounds of rejection as set forth by 37 CFR 41.39(a)(2). In response to the November 30, 2006 amendment, the examiner issued an advisory action February 27, 2007 indicating that the amendment would not be entered due to the fact that the Examiner's Answer clearly states that "no new grounds of rejection are presented (see footnote 1, page 4 of the Examiner's Answer)". The advisory action further stated that "the amendment will not be treated as a reply brief, since under 37 C.F.R. 41.44(b), a reply brief should not include any new amendment. Since this response includes an amendment, it is non-compliant under 41.44(b). Applicant's two month period for response (via reply brief) has expired and the file is being forwarded to the BPAI for docketing of appeal." It would like to be pointed out that the examiner had not indicated the correct section of the MPEP in the advisory action: The correct rule is not 41.44(b), but 41.41(a)(1) and (2) and 41.41(b).

The petition decision of August 16, 2007 determined that the footnote in the Examiner's Answer of September 27, 2006 was not a new ground of rejection.

On January 7, 2008 the Examiner vacated the Examiner's Answer of September 27, 2006 in favor of a new Examiner's Answer. In the Examiner's Answer of January 7, 2008 the Examiner removed the foot note in question. Therefore, there is no longer a question regarding a new ground of rejection in the Examiner's Answer as the footnote is no longer in the Examiner's Answer.

Petitioner's request to have the amendment filed on November 30, 2006 entered and have prosecution reopened is **DISMISSED** for the reasons set forth above.

In conclusion, the application will be forwarded to the Board of Patent Appeals and Interferences so they may render their decision. Also, it is not believed that petitioner is owed any further relief at this time.

SUMMARY: The Petition is **DISMISSED**.

Any questions regarding this decision should be directed to Patricia Engle at 571-272-6660.


Donald T. Hajed, Director
Technology Center 3600
571-272-5150

***/ple : 1/28/08

